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September 12, 2014

By ECF

Judge Judith C. McCarthy
United States District Judge
Charles L. Brieant Jr. Federal Building
United States Courthouse
300 Quarropas Street
White Plains, NY 10601-4150

RE: *Montesa v. Schwartz*, 12 CV 06057 (CS)(JCM)
Plaintiffs' Letter Motion to File a Sur-Reply to Defendant's Motion to Compel

Dear Judge McCarthy:

We write on behalf of plaintiffs to request permission to submit a sur-reply in further opposition to defendant's Reply Memorandum in Support of Defendant's Motion to Compel, filed with the Court on Tuesday, September 9, 2014. We have never requested such relief before but, in this instance, the defendant's brief raises significant issues not previously or adequately addressed by plaintiffs. We believe such relief is warranted here and would be of assistance to the Court in resolving the issues before it.

Specifically, counsel for the District makes several misstatements that require corrective responses by plaintiffs. First, and for example, counsel states "close to 70 plaintiffs had not responded to her letter." This assertion is wrong. Many plaintiffs responded to our communications. Second, counsel states plaintiffs have refused to schedule depositions. This assertion too is false and quite a troublesome claim. Plaintiffs wrote two letters to counsel wherein a reasonable deposition schedule was proposed only to be summarily rejected by defendant's counsel. Third, counsel blatantly misstates plaintiffs' positions on a variety of issues. Plaintiffs have not refused to go forward with depositions. Rather, plaintiffs' counsel has repeatedly stated that because of defendant's discovery requests and deposition questions, plaintiffs require their students' files to adequately respond to discovery requests and to prepare

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for their depositions. Plaintiffs seek only to be properly prepared for questioning by the District's attorneys.

Defendant also raises for the first time in its reply two arguments that require a response by plaintiffs. First, defendant raises the "ineffectiveness" of the authorizations submitted to the District's counsel and claims the authorizations must be "personally" delivered to the District by a student's parent. This is not the law, and plaintiffs seek to address this argument in their sur-reply given defendant's claim to the contrary. Second, defendant raises the number and identity of the parents submitting the authorizations arguing *inter alia* their irrelevance to the litigation. Again, defendant's argument misstates both relevant facts and applicable law. Plaintiffs' counsel possesses additional authorizations not previously submitted to the District's counsel because of their current refusal to produce records pursuant to those already served. Third, the implication that only "42 students" are "proper plaintiffs" is also false. Authorizations for all student records are relevant, including those whose children have graduated but who attended District schools during the applicable years of this litigation. Fourth, defendant's counsel in an email to the undersigned specifically acknowledged that they were not questioning the authenticity of the authorizations submitted by plaintiffs' counsel and were not accusing plaintiffs' counsel of forgery or fraud. To the extent therefore that District's counsel claims that the identity of the parents must be "verified," such an argument should be rejected as clearly disingenuous. Plaintiffs' counsel has personally obtained and received parents' authorization forms, the identity, content, and nature of which cannot be disputed by the District.

In sum, the defendant District's reply raises significant issues that should be further addressed by plaintiffs in a sur-reply. We respectfully request the opportunity to submit one here. Should this relief be granted, counsel intends to submit their sur-reply on or before Thursday, September 18, 2014.

Thank you for your courtesy and attention.

Respectfully yours,

/s/Laura D. Barbieri

Laura D. Barbieri

cc.: All defense counsel by email